

In the Matter of Merchant Mariner's Document No. Z-849321-D3 and
all other Seaman Documents

Issued to: THAD WADE HINSON, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1049

THAD WADE HINSON, JR

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 December 1957, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as Deck Maintenceman on board the American SS STEEL AGE under authority of the document above described, between 2 June and 16 November 1957, Appellant failed to perform his duties on nine occasions; and absented himself from his vessel without proper authority on three occasions. Other offenses charged in these two specifications, plus two other specifications, were dismissed by the Examiner.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results on the hearing. Appellant was represented by nonprofessional counsel of his own choice. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Master, a memorandum prepared by the Master and attached to the Official Logbook, excerpts from the Medical Log and a certified copy of an entry in the Official Logbook relating to 15 October 1957.

In defense, Appellant offered in evidence the testimony of the ship's union delegate, and he testified in his own behalf.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and two specifications had been proved in part. An order was entered suspending all documents, issued to Appellant, for a period of two months outright and one month upon

one year's probation.

The decision was served on 26 December 1957. Appeal was timely filed on 13 January 1958.

FINDINGS OF FACT

Between 1 June and 3 December 1957, Appellant was serving as Deck Maintenceman on board the American SS STEEL AGE and acting under authority of his Merchant Mariner's Document No. Z-849321-D3 while the ship was at sea and in various ports while en route to and from India.

During the course of the voyage, Appellant was examined by doctors on numerous occasions and he was hospitalized twice - at Calcutta and Bombay. Entries made by various ship's officers in the deck logbook state that Appellant was absent from the ship or failed to perform his duties on many different dates. These entries were not made known to Appellant or entered in the ship's Official Logbook except with respect to 15 October 1957.

On 15 October 1957, Appellant was absent from the ship without authority while in a foreign port. Consequently, he failed to perform his assigned duties on this date during the regular working hours from 0800 to 1200 and 1300 to 1700. This incident was recorded by the Master in the Official Logbook and Appellant was fined one day's wages of \$12.28. The entry states that a copy of the log entry was read and given to Appellant. His reply was: "I was ashore already."

Appellant has no prior record. He testified that he has been going to sea for eleven years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner and is based on the following grounds:

1. The Charge and Specifications were hastily and improperly drawn, and the Hearing was prematurely held.
2. The Examiner erred in admitting the Master's memorandum, and in his evaluation of the memorandum.
3. The Medical Reports made by doctors in foreign ports are ambiguous and superficial. The professional qualification and ethical standards of the doctors is dubious.

APPEARANCE: Walter H. Sibley, Seafarers International Union,
1216 E. Baltimore Street, Baltimore 2, Maryland.

OPINION

Appellant was charged with 51 separate offenses. The 12 offenses which the Examiner found the Appellant had committed were: 2 June, failing to report on a Sunday to assist in rigging the jumbo gear; 3 June, leaving the vessel at 1400 without proper permission; 22 July, absenting himself from the vessel without permission and failure to perform during the regular working day; 13 September, 14, 15, 28 October, and 7, 16 November, failing to perform his duties; 14, 15 October, absenting himself from the vessel without proper permission. The only alleged offenses for which Appellant was logged in the ship's Official Logbook were those two that occurred on 15 October.

With this one exception, proof of the offenses committed by the Appellant is based upon the memorandum prepared by the Master, which, according to his testimony was prepared from the deck logbook as the offenses occurred. In his testimony, the Master stated that this memorandum, after completion, was attached to, and made a part of the ship's Official Logbook. The first question is whether the memorandum is entitled to the same evidentiary position as an exception to the hearsay rule as is the ship's Official Logbook? This question must be answered in the negative. It was not attached to or made part of the log until an appreciable time had elapsed after the alleged offenses were committed; the alleged offenses were not individually signed by the Master; and Appellant was not given an opportunity to reply to each entry. Neither the Master nor the Examiner considered this memorandum as constituting entries in the Official Logbook.

This paper can only be considered as a memorandum, and as such may be used only to refresh the recollection of the person testifying. As such, those matters about which the Master testified and about which he had no personal knowledge other than the information contained in the memorandum are hearsay and cannot be used as the sole basis of proof of the commission of the alleged offenses. The memorandum could only be used by the Master to recall to his mind the fact that he copied this information from the deck logbook. This was not proof that the matters took place as related in the deck logbook. Since no other evidence relating to those offenses was introduced there is no substantial evidence to support them and they must be dismissed.

On 15 October, Appellant was absent without leave and failed to perform his duties during the regular working hours. This incident was properly logged and Appellant was fined one day's

wages. The offenses committed on 15 October were the only ones validly established. An entry in a ship's Official Logbook, made in the regular course of business, is admissible as an exception to the hearsay rule in accordance with 28 U.S.C. 1732.Wigmore on Evidence, 3d Ed., sec. 1641(2).

ORDER

The record indicates that Appellant has served a portion of the outright suspension prior to obtaining a temporary document. In view of the dismissal of the specifications except with respect to the two offenses on 15 October 1957, the balance of the order imposed by the Examiner at Baltimore, Maryland, on 23 December 1957, is

REMITTED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 2nd day of July, 1958.